

200737049



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

*Uniform Issue List: 402.00-00*

JUN 19 2007

T:EP:RA:T3

**Legend:**

Employer A =

Company B =

Company C =

Individual C =

Amount M =

Date F =

Date G =

Plan X =

Dear

This is in response to your request dated March 2, 2007, submitted by your authorized representative, in which you request a waiver of the 60-day rollover period contained in section 402(c)(3) of the Internal Revenue Code (the "Code"). Correspondence dated April 20, 2007, supplemented the request.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested

You are age 61, and represent that as a result of your termination of employment with Employer A, you received a distribution of your account balance of Amount M from Plan X. You assert that your failure to accomplish a rollover within the 60-day period prescribed by

section 402(c)(3) of the Code was a result of an error on the part of Company B in failing to follow your distribution instructions.

You were an employee of Employer A, and a Participant in Plan X. Plan X is a plan described in section 457 of the Code. Plan X is administered by Company B. You retired in 1994. In June 2002 you requested that Employer A roll over the balance of Plan X, Amount M, into an IRA at Company C. Company C gave you the forms necessary to complete the rollover. Those forms, along with a "Distribution Request Form" from Company B were filled out, executed, and submitted to Employer A. Employer A forwarded all forms to Company B on Date F, 2002. You received a letter from Company B dated Date G, 2002, stating that your rollover request had been processed. In addition, the 2002 Form 1099 issued to you by Company B treated the amount as a direct rollover.

In July, 2006, Individual C, a representative of Company C, contacted you about your investments. It was at that time that he informed you that your funds were not invested in an IRA. Individual C informed you that Company B did not instruct Company C to open an IRA. The documents that you submitted indicate that you properly filled out an IRA application form for Company C, but that Company B failed to forward these documents to Company C, and Company C erroneously put the money in a non-IRA account. Amount M is currently in a non-IRA Certificate of Deposit with Company C. You did not realized that your funds were not in an IRA until July 2006, because you relied on the services of a professional tax advisor, who did not inform you of its error.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement with respect to the distribution of Amount M contained in section 402(c)(3) of the Code in this instance.

Section 457(e)(16)(A) of the Code (concerning rules applicable to rollovers from compensation plans of state and local governments) provides, in part, that if any portion of the balance to the credit of an employee is paid to the employee in an eligible rollover distribution (within the meaning of section 402(c)(4) of the Code) and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan described in section 402(c)(8)(B) of the Code, then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

Section 457(e)(16)(B) of the Code provides that the rules of paragraphs (2) through (7) and (9) of section 402(c) of the Code and section 402(f) of the Code shall apply for purpose of subparagraph (A) above.

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day

on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under sections 402(c) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 401(a)(31) provides the rules for governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31)-1 of the Income Tax Regulations ("regulations"), Question and Answer-15, provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

Section 1.402(c)-2 of the regulations, Q&A -1, provides, in relevant part, that "...a rollover is either a direct rollover as described in section 1.401(a)(31)-1, Q&A-3, or a contribution of an eligible rollover distribution to an eligible retirement plan that satisfies the time period requirement in section 402(c)(3) [of the Code] and Q&A-11 of this section and the designation requirement described in Q&A-13 of this section."

As a result of Company B's failure to follow your instructions, no direct rollover of Amount M, within the meaning of section 401(a)(31) of the Code and the regulations promulgated thereunder occurred. As a result, your calendar year 2002 Plan X distribution was subject to the rollover rules of section 402(c) and the regulations promulgated thereunder including the requirement that the rollover be accomplished within 60 days of the date the distribution is received by the distributee.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

Amount M was eligible to be rolled over within 60 days of the distribution from Plan X. The documentation that you submitted with your request demonstrates that you correctly attempted to rollover Amount M within 60 days and the error involved in your not meeting the 60 day rollover period was due to Company B's failure to follow your instructions.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount M from Plan X. You are

granted a period of 60 days from the issuance of this ruling letter to contribute Amount M into an IRA. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount M will be considered a rollover contribution within the meaning of section 402(c)(3) of the Code.

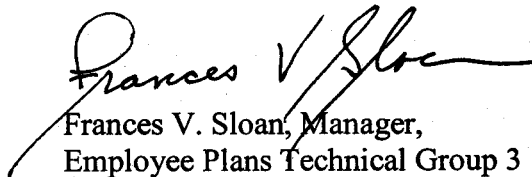
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this ruling has been sent to your authorized representatives in accordance with a power of attorney on file with this office.

If you wish to inquire about this ruling, please contact Ron Hallsten (ID ) at ( )  
Please address all correspondence to SE:T:EP:RA:T:3.

Sincerely yours,

  
Frances V. Sloan, Manager,  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose

CC: